

Probation Services Task Force Meeting Minutes
AOC Northern Regional Office, Sacramento, California
June 7, 2002

Task Force Members Present: Hon. Patricia Bamattre-Manoukian, Hon. Irma J. Brown, Hon. Denny Bungarz, Hon. Trish Clarke, Mr. William Davidson, Hon. Ronn Dominici, Ms. Sheila Gonzalez, Hon. Steven E. Jahr, Mr. Michael D. Johnson, Hon. Kevin M. McCarthy, Mr. Paul Nicolosi, Mr. Michael Roddy, Hon. John Tavaglione

Task Force Members Not Present: Mr. Alan Crogan, Mr. Phil Kader, Mr. Bill Mahoney, Mr. Ralph Miller, Hon. Frank J. Ochoa, Mr. John Rhoads

AOC Staff: Ms. June Clark, Ms. LaRon Doty, Ms. Audrey Evje, Ms. Allison Schurman

CSAC Staff: Ms. Elizabeth Howard, Mr. Rubin Lopez

Welcome and Introductions

Welcome was extended to Paul Nicolosi, and LaRon Doty.

Standards and Guidelines:

Mr. Bill Davidson

- This document was put together and distributed the committee on standards and guidelines with instructions to get back to me in several days, since I didn't receive any comments I assume it's okay.
- What we have is basically a recitation or a way to set out standards and guidelines that the task force might like to adopt. When we review the standards and guidelines they will be consistent throughout. There is no precedent or model for the future depending on what the recommendations are that come out of the task force. They will become the model for future standards and guidelines that we might author for probation services in the state of California. Take a look at them and if you have suggested changes, let Bill know. There is a form that I am proposing that we use to put all of the standards in so that there is consistency when we produce them for the final report. Please take a look; I will assume it's okay if I don't hear from you.
- Over the next few months, we will author all of the various standards and disseminate them to the committee members via email, get feedback, and then send them to Audrey to disseminate to all of the task force.

Education

Judge Irma Brown

- There is a one-page document in packet.
- Proposed recommendation: Probation should work with courts, schools, parents, and education agencies to ensure that adult and juvenile probationers are provided with appropriate general, special, and vocational educational services.
- Former recommendations will be used as headers in text:
 - Probation officers should be trained to ensure that children's educational rights are investigated, reported, and monitored.
 - Probation departments should, whenever appropriate, support the efforts of parents, and schools to identify children with exceptional needs or other educational disabilities to provide proper educational services.
 - Probation departments should work with schools and education agencies to ensure that juveniles in custody and on probation receive the educational services and appropriate curriculum provided required by law.
 - Probation departments should work with education agencies to ensure that adult probationers have access to educational and/or vocational services.
- The education group has had two conference call meetings. We came to a consensus regarding the education recommendations. We agreed to collapse them into one recommendation. The proposed recommendation is on the handout. The four points that were the original recommendations will follow in the text. If you have comments, send them to Judge Brown.
- Education recommendation wording: If you compare it to the other recommendations it says "probation" should where the other recommendations said "probation departments" or "probation officers" but we felt that it should apply to both departments and officers so leaving it the generic "probation" works better. We also added in the words "general educational purposes" because we didn't want to lose the spirit of that wording which includes vocational and special education, particularly with the children in detention facilities that may not have special education needs that still need services.
- One observation: there is so much bureaucratic inertia that I wonder whether we should insert words such as "probation" or should evoke specific language.
- People might say that they do this already and don't have to worry.
- The group should think about recommending specific resources.
- We could highlight that further in the text.
- The idea is to lay out best practice in the text rather than in a direct recommendation
- This is a frustration for the folks in probation that the education system is responsible for doing something but isn't, so probation has to take over.

- The rules are already there but education is not fulfilling their end of the bargain.
- What if they have a specific probation officer that is identified as the liaison in the schools to identify the larger problems? Notion of devoting specific resources to education.
- In general this will be the new language.
- The group will be discussing the education further.

Collaboration working group

- We had a conference call on May 29 and are trying to figure out the new direction. There is interest in a recommendation for the appointment, evaluation, discipline and termination of the chief probation officer now to address some issues that are going on now. That becomes somewhat of a dilemma because it is a part of the governance discussion. We want to recognize that what we are doing now is an interim step. As for legislation, are we to make a strong recommendation?
- This is interim in our minds, it may or may not be where we end up. There are problems again by the fact that no one really has the veto power.
- I am still concerned that the principles be honored.
- We are looking to put something forward to deal with problems now. We have been asked to come up with a model for the appointment, evaluation, discipline and termination of the chief probation officer
- What about the Brulte bill? AB 1352 introduced originally in San Bernardino County, to shift the appointment and removal of the chief probation officer in that county only to the board of supervisors. After a short time, Riverside was added to that bill and in those two counties only, it would have shifted to the board of supervisors. I believe the bill was killed in the legislative session. Part of the compromise with that bill and the discussion was that the legislature is looking at this task force to come up with a recommendation for the next legislative session as to the appointment, evaluation, discipline and removal of the chief probation officer even if it is an interim model and our long term governance model may be something different but hopefully will be congruent with our long term model. If nothing else we need to come up with something that we can introduce in the fall. Which is why we have decided to spend this meeting working on the model.
- We could draft legislation with perhaps a sunset clause that will coincide with our final recommendation?
- One of the moving forces behind this task force was this very problem, the selection, supervision and termination of the chief probation officer and the tension that exists on these issues. In talking with Audrey and others, exactly what you have indicated has occurred. There has been all this competing legislation and there is a great desire to have something to work with from this

task force. It would be helpful if possible to recommend something that will be consistent or congruent with the final governance model. If it is possible, it would be very helpful to have something that transitions, maybe with a sunset but something that would be consistent with the work that we have already done and work into our final recommendations. While we don't have this clearly in mind, we have the five principles.

- These are the various processes that we are aware of now and we put them in this format to begin discussion. There might be other models to consider but there is a sense of urgency to discussing this issue. Hopefully, we will come up with some kind of recommendation that could possibly translate into legislation.
- We want to take this recommendation out to the groups for feedback and begin the dialogue. It would be a model that is hopefully supported statewide. This is one of the main reasons that we have the task force.
- The other point that we talked about is that we may not be able to get to where we know we need to be in one step, and this may be the first in a series of steps to get where we want to go.
- There appears to be some room for compromise now and we want to come to some compromise while the iron is hot.
- Following the conference call, Liz, Rubin and Audrey came up with this general model. There are two other handouts. One is a list of the appointment and removal processes in other states. Second is a document with the statutes currently pertaining to the appointment of the chief probation officer and the juvenile justice commission.
- On the conference call, we talked about a matrix and weren't quite sure how to address this. One way was to compare it against the principles. Principle 4, Standards and Measurable Outcomes has special marks down the list as it seems to go more with the services recommendation and may impact some of our governance discussions for the long term model but for the immediate discussion it may not be the most relevant principle for discussion. We then went down and starting with number 1 and the two options a and b with the courts having the complete appointment, evaluation, discipline, removal and fiscal responsibility for probation. First looking at that and then the county with the complete authority. Going with the principles, it would connect the authority and responsibility for probation, however it would not have collaboration. With the exception of column five, for all of counties being charter counties that may have a different system.
- Model 2 is court appoint/removal as happens in current general law counties and b is county appoint/removal as currently occurs in many charter counties and or civil service merit system counties. The difference between that and 1 is that fiscal responsibility for probation would shift under the court model to the courts with model 2 keeping the status quo.

- Number 3 is court/county joint appointment/evaluation/discipline/removal and liability model. A system where together courts and counties would administer probation. Column authority and responsibility would be connected, collaboration is there, occurring at the local level and adult and juvenile services are joined.
- Number 4 is court appointment with veto by county or vice versa. We didn't go into the detail of the evaluation/discipline/removal under that model. Would it stay with the court and the county get a veto through the process? We would need to talk about that.
- Number 5 would be court appointment with input from county and vice versa. Once again, we didn't lay out all of the options for evaluation/discipline/removal under that model.
- Number 6 a switching system where one side appoints and the other terminates with the possibility of shared responsibility for evaluation and discipline. I'm not sure in each county how that would work but the idea would be switching of responsibilities.
- Number 7 is a slight tweaking of that which would be court or county appointing with court or county terminating and then the other side would indemnify for the roles and the process.
- Number 8 is a similar system however the court or the county would have a veto over the other decision and would assume liability for the exercise of the veto. They would assume the liability for whatever decision was made.
- Number 9 is court appointment with county veto and shifting the responsibility to county for evaluation discipline and dismissal however the county would receive input from the court on all those decisions.
- This is what we came up with and I am sure that there are many more models but this is what we came up with last week.
- I thought I would start by throwing out the realities. The realities that I have picked up from this committee and everyone else statewide are basically the following: there is a need for this recommendation sooner rather than later; there is the ongoing tension between the county and the court. The judges in most counties have expressed that they prefer to appoint, supervise and make decisions related to employment of the chief probation officer. There is collaboration in some counties and in certain counties the board of supervisors does it but in most counties it is the judges and they seem to be very happy doing that and want to continue. The probation employees are county employees. Counties are liable for these employees. When there are lawsuits they look to the county. Probation officers who work in our courts, even though they are considered an arm of the court, are still county employees and look to the county when there is any litigation. A lot of the judges feel that things are working just fine and there is no need to change anything. I think that some judges are of the mindset that we have been doing this for years and

it's working okay so why change it. Not to say you can't change the mindset. I think this report has opened a lot of new thinking in terms of the court and the counties. The judges are pretty happy with the way things are now. We talked about liability. In terms of liability certainly for the probation employees, liability lies with the county at this time. In terms of the chief probation officer, while I think there are those that assume that it lies entirely within the county, my take on it is that if you have court involvement in terms of employing supervising and terminating then there is at least a suggestion of dual liability as to the chief probation officer only. I think that we need to look a little more at the employment issue but I think that the liability concerns with the court involvement begin to be a more shared responsibility.

- That wasn't brought out in the last court meeting.
- It's hard to say on the court cases, but in just general legal principles if you are hiring, supervising, and firing, when the lawsuit comes you should be named even if in name only. I think that whatever recommendation there is with dual involvement there is dual liability. The awareness should be that any kind of litigation will probably involve both entities.
- I guess what I'm saying is realistically if you are saying one side just has the veto, does that relieve them of liability – no. One side is not paying the salary they are just appointing. Does that relieve them of liability – no. I think it's a shared liability and there has to be the ability to handle it.
- Whatever recommendation we come up with the AOC and the judges are not interested in the facilities. It does look like at least for some period of time that the probation officers will remain county employees. Courts and AOC do not want the institutions. Probation has strongly indicated that institutions should stay with the courts. Probation should be unified with adult and juvenile in the same department. We need to come up with an interim suggestion that will be universally supported in 58 counties with legislation written which will also have to change the existing statutes. That is our charge today.
- Next meeting we will discuss the formation of a statewide Probation Services advisory committee. A suggestion is that this will be an advisory committee to the Judicial Council with a make up similar to this task force. This would be a statewide committee working to implement the suggestions and recommendations so we don't lose the momentum in resolving issues. Any recommendation about an interim piece of legislation is one that could be suggested in conjunction with a statewide advisory committee, which would work to further the goals of probation and the counties and the courts.
- This was the other item we have talked about even if some of the recommendations in our final report are long term and require funding that we don't have right now, we have the option of a short term legislative proposal as Trish pointed out that may or may not segue into the recommendation and we also have the opportunity to immediately propose the advisory committee and

suggest the composition of the advisory committee, too. Both of those things we want to keep in mind.

Appointment, Evaluation, Discipline and Termination of the Chief Probation Officer

- I'm looking at the recommendations and based on the principles and our spirit of collaboration the only one that falls within our spirit of collaboration is number 3.
- If there is sharing and the courts don't want to take on liability, if they take on the chief probation officer and there is an issue with detention facilities, how can we only say we are going to take liability up to this point.
- I'm saying that if we are talking about joint approach and collaboration that is the purest form.
- I agree with what you are suggesting but I'm saying that I think the county board would say if we are getting sued then you are also and I don't know how you separate the two.
- The reality is that the chief probation officer is appointed and responsible to the courts. If a lawsuit is filed over something that that appointed person does, the courts will be sued anyway. I think that reality says that the shared liability is already there.
- I think the question is a good one. Can you limit liability if you are involved in any aspect of hiring, supervising or terminating a chief probation officer? If the chief probation officer is responsible for the entire department and makes decisions that result in lawsuits, can you limit your liability to only the employment issues involving the chief probation officer?
- A piece of legislation could define the liability. Whether we want to make that a part of our legislation is a question.
- I'm just wondering if the county supervisors would then stand still because if you start limiting your liability you are going against what you are trying to do with a collaborative model.
- And they wouldn't stand still for that. There are some realities that weren't put out with that first list. Those are the judge's realities. The counties have other realities. You are saying that one of the judge's realities is the status quo. I think that the whole point from the county's perspective is that we want to change. If the courts are going to have all of the authority then we want them to have the privilege of paying for some it. That is collaboration; just going forward with how it is and not changing anything doesn't speak well for collaboration.
- No, but I think that the reality is that a lot of the judges are happy with the status quo. There is the other piece of legislation, too, that requires the juvenile court judge to inspect the facilities. If there is anything substandard, the juvenile court judge ... that's why I think we shouldn't get too hung up on

liability, because we are not going to solve the liability. From my perspective if the law says that the juvenile court judge has to inspect the facilities and the facilities are inadequate and there is a lawsuit, there is going to be a lawsuit against the county that is responsible for maintaining it and the court that is responsible for supervising it. I don't think we should get lost in liability.

- But ironically, that statute and responsibility has been there for years, there are juvenile halls all over the state that have been sued, and I'm not sure that in any of those suits that the court was a named party.
- What ends up happening, I think, is the judges that handle some of these lawsuits condition that the concern is through the county, the case goes before a judge who is in the county where the juvenile court is supposed to be examining the facilities and the case is resolved in the court in some fashion.
- You get the money from the county. If the public wants action, the appointment authority problem should be resolved sooner rather than later. So, if we don't dwell on liability and we stick to collaboration, which is where I was going.
- Liability is always going to be an issue, but we don't want to get lost on that issue or whether we can limit it or not because if there is a lawsuit they are going to name everybody anyway.
- I agree on the liability issue. Personally, the recommendations are excellent options and I think we can eliminate those that don't make sense given the principles and recommendations. I look at these 3,8,9, possibly 7 can be explored. From what I heard about the legislation, if there is going to be any change in the status quo it is going to come through the collaborative process.
- Let's focus on those models most likely to be successful and accepted.
- Not spending time on 1.
- Number 2, I don't think we can change the charter counties.
- Does that require a constitutional change?
- No. You just need very clear, strong legislation.
- Can we as a state write legislation to overturn a decision that is made by vote at the local level? June and Liz?
- I think that is right, I don't think you can force them to do anything.
- You can by constitutional amendment.
- Los Angeles is a charter county and is the largest county, so we are talking about a lot of people.
- Let's talk about a model and then talk about its application to the charter counties. Keep in mind that the charter counties are Los Angeles and San Francisco.
- Are they having any current problems?
- The judges in Los Angeles, are happy with the situation.
- Number 2 is status quo. No need to explore further.
- Number 3 is the perfect model.

- Number 4, I think that is worth exploring
- Number 5: Also worth exploring
- Number 6: No need to further discuss
- Number 7: No need to further discuss
- Number 8: No need to further discuss
- Termination follows appointment in 4 and 5. That is the difference from number 8.
- Number 9: consider further
- With these, there is the spirit of collaboration even though one is hiring and the other is firing. You wouldn't want to hire someone that will immediately be fired.
- Interestingly enough, number 3 is the broad based idea. The others define the collaboration. This is something that we should think about, do we stay broad based and let the locals work that out or do we define the way in which they will collaborate.
- Three is collaboration only, no veto.
- Yes, but it doesn't say how the collaboration occurs.
- I would think that if do go with 3 we have to spend the rest of the day figuring out what the details are. I don't think we can say 3 and then hope that it works out.
- No, but that is why I'm asking the question because we could.
- The other ones seem to be more definitive of number 3 if you take number 3 down to the next level and say we want you to work together and here is how you do it.
- I think you have to. They want the recommendation and they want the specifics. How are you going to implement this? If you go the recommendation does it include the veto, etc. Who has the power?
- Is it possible to adopt that as the broad statement and then spend the rest of the day developing models? I can picture that different counties might want to do it differently. Is that a possibility?
- Would that not carry out the charge?
- Number 3 was added to the chart late in the process because of a discussion I had with someone about the idea having a joint hiring committee process that would be composed of equal numbers of court and county representatives. Perhaps, 3 court representatives, 3 county representatives and you need four people to make the hiring/firing decision. In the legislation you would say, "equal responsibility for liability for any decision related to that committee." We talked further about that and it might be difficult for small counties that have only two judges. Some counties have great collaboration already and may not need that level of detail but then this was bringing it a level up to allow some flexibility in different counties. We would need to spell out that it is equal joint authority with equal joint liability.

- Number 3 seems to be in concept what we might want to implement and then pulling from the other ones, especially 4, 5, and 9, there may be aspects of those that would fall within 3. Model 3 basically being joint appointment, evaluation, discipline, removal and liability for the chief probation officer.
- Follow with examples of how this could be done by an appointment committee made up of representatives from both side, e.g. a sign off if the counties aren't interested in being a part of it.
- What we are really saying in 3 is joint involvement as the overarching principle and then considering models to meet that or are we actually saying a literal joint action in all of these facets, because if we are that is very different from either of the four options or the five option.
- I thought we were saying joint responsibility for every activity that is listed here. People truly being involved in mutual agreement.
- I think that it is but you have to say that and then let the counties have the flexibility.
- In some counties the court may not be interested and their involvement could be to sign off on the issues. It meets that requirement.
- It is important to encourage both sides to participate because we talked a lot about most chiefs not getting evaluated. The chiefs answer to two masters and need input from both sides so you don't get to the point of discipline or removal.
- And they need to be evaluated on not only their performance in the courts but also in their financial and administrative ability.
- I think that you can't have counties opting in and opting out or doing their own thing. We are doing that right now. The clearer cut, the better.
- Another thing that the chiefs have brought up over the life of the committee is that currently in many counties you have the presiding judge or juvenile presiding judge hiring and firing, so you are hired and then that judge moves off to another assignment. Then you have a new judge. In terms of the mental health of the chief probation officer, whatever model we come up with it would be helpful if there is some stability in terms of the employment decisions made with respect to the chief probation officer. Now, it may be hard to get that stability because the presiding judges and juvenile presiding judges change every two years and the members of the county government as elected officials change. So, to the extent that there could be some stability in terms of the employment decisions, I think it would be helpful to the chief probation officers who essentially in most counties sit at the pleasure of the presiding judge. I know in most counties it has worked out well, there have been long term chief probation officers but any model you go to, remember that the person we are talking about is the chief probation officer who supervises a huge department so there has to be some ability to hire the person, give them

concrete expectations and guidelines and then engage in a fair employment process without members of this group coming and going every year.

- Elevating the appointment process to the level of the whole court rather than one person could introduce stability. Obviously a joint board also offers more stability. It clearly represents compromise from what happens today. I guess the legislation may need to talk about each county has to do it this way.
- Our charge is to be somewhat definitive about what we believe is going to take place in regard to chief probation officers. Quite frankly, I work for two bosses and that's how I see it. And I want both of those bosses invested in my arm. I don't want one involved and the other invested. Or one taking action and the other not. It's very hard to work under those situations. I know who I work for now, the judge. The point is that I have to keep the board happy because they could very easily just stop funding probation. There has got to be a joint investment in the model.
- The bottom line is spell it out and give it some body.
- We can't allow different counties to opt in and out or you have the same situation as we do now.
- There may be flexibility in terms of who fills the seats. It may be that the presiding judge appoints whoever fills the court side and I don't know who would do it on the county side.
- The board president?
- I think the continuity issue came up and possibly the CAO tends to be a career position and board members don't tend to turn over that much either. It's the presiding judge and the juvenile court judge that turn over every two years. Most of the time the judge can go back to the other judges and discuss it. They get information and input.
- You want to also insure that there is some clarity as to who makes the decisions for the sake of insuring that the chief probation officer knows whom they are working for.
- The chair of the board or the presiding judge would probably be the overall supervisor for the chief probation officer but we would still have these boards to do the hiring, etc.
- I think that any critical hiring or termination would be the full board in closed session who would make that decision with the chair and the CAO. The board may delegate meeting time the final decisions would go to the full board. I am assuming that the same would be true for the courts.
- Your point and the question is should there be designated terms for the individuals serving on these collaborative committees so you don't have presiding judge, juvenile judge, third judge and three members from the board that hire this person and then all of a sudden there are problems and you have different judges and members of the board who are evaluating and are wondering how the person ever got hired. Who is going to hire, supervise and

evaluate? Should there be terms or should they simply serve at the pleasure of the board and the court? Should it be that open?

- I'm not sure that is different from anybody else you hire in any position. They serve at the pleasure of the board, the probation officers serve at the pleasure of the court. I'm not sure probation officers are any different.
- If you take a look at statutes, it essentially says that the court has to have some type of cause to fire. I don't serve completely at the pleasure of the court.
- CAO's work for a position that turns over every year
- Are we talking about governance? Once the person is hired on the basis of 3.
- Yes, I think 3 is the umbrella that we are starting with.
- You could insure the same group of individuals for at least two years by coordinating the terms of both groups.
- Or you could make sure there is always overlap.
- I think we are spinning our wheels. Every department head has to go through this all of the time. The boards continually change all of the time.
- You are right. I've worked for 35 presiding judges, maybe more.
- Maybe we need to start talking about the composition. The numbers, how you hire, what expectations there are for evaluations and then how you terminate. As Bill points out, the statute now provides (W&I 270) that the juvenile probation officers in any county shall be nominated by the juvenile justice committee in such manner as the judge of the juvenile court in that county shall direct them and then shall be appointed by such judge. It's the juvenile judge that appoints and then the final part of the statute says that the probation officer may be removed at any time for good cause shown. So what Bill is pointing out is that right now in those counties that are governed by this statute the chief probation officer has some measure of protection in that you are not at will, or at least you consider yourself not at will.
- Where you have a problem is that the juvenile court uses the juvenile law section and they also have the penal code. I've heard presiding judges get into it with juvenile presiding judges about who has the authority so there is an opportunity to clarify.
- All this has to be amended. Any legislation that is introduced has to contemplate amendment of all these existing statutes that create the conflict with the juvenile presiding judge, the juvenile justice commission and the presiding judge. Then we have to deal with the charter counties later.
- How about members of the probation department being represented on the committee? Has that ever been considered? The chief probation officer is going to be acting on behalf of the department.
- I think that is inappropriate. It would be like the social services staff hiring the new director of social services.
- If you look at the make up of the committee, automatically you have representation.

- I was looking at it from the perspective of the departments. There is a certain philosophy that has been adopted by the department, morale is good, everyone is happy. You want to bring in a chief probation officer that fits and I would think that the department would want to have some say in who comes in.
- It is unrealistic to think that someone who is going to be promoted to supervisor is hired by the people they will be supervising.
- If you have a department in good shape I'm not aware of any appointing authorities who would want to screw that up. I see situations where they have the line officers have input into the process without the authority. That could be up to local decision. It could be part of the process but to legislate that concerns me.
- I think that someone made the point that employees within a department. Certainly all of the individuals who may not have the ability to change what is happening get input from the courts and counties.
- I may be misunderstanding but if the discussion we are about to begin is predicated on the adoption of principle 3, I would like to express a reservation about supporting that without opposing it at this point for the reason that it seems to me that either 4 or 5 have to remain as considerations since we are being put in the awkward spot of having the chicken before the egg. In other words, the overall governance model creation hasn't happened yet but we are being asked to address a pressing appointment authority problem before creating a proposed governance model and in order to do that, we are potentially creating an elaborate short term solution that will cut against ultimate efforts to create the optimum long term governance model solution by which I mean for example to be overly simple, let's assume we all agree in our future work that because of the long term view of county plans, counties can't support probation offices. Let's assume that we know this. We know that the state has a short term funding crisis, but that's where the money is. So, assuming hypothetically that we came to our conclusion and the best long term result is the state acquiring some structure associated with a state funding stream. If we develop a proposal for appointment/evaluation/termination now that cuts against our long term model what we do is create a barrier for achieving our objective. This is a chicken and egg problem and I agree that we have to do it but I'm wondering whether when we create this short term solution we also have in mind our likely general long term solution so that we don't do something that is not a segue to a long term solution. For example if we come up with the decision that long term it ought to be with the county, shouldn't we consider county appointment with veto by court or county appointment with input from court. Or at least say, the handwriting is on the way, long term is with the state. That seems to gravitate more towards a court appointment with veto by county or court appointment with input by county. So that when the long term solution is recommended the county drops away and the process can support processes in place. If on the other hand the long

term solution is that the court applies funding from the counties for probation then maybe the court drops away from what is basically a county process. I suppose that is why I think that 4 and 5 are areas that should not be dismissed out of turn, if that is what is occurring right now.

- I don't think we are dismissing 4 and 5. We are saying keep those in but 3 seems to be at this point the one that we should discuss first. I think we do want to be consistent with the long term recommendation.
- I understand where you are coming from by using this approach as long as it can be done now. If this group is sure of what we want the long term plan to look like, it makes perfect sense to set something up now that is consistent with that. I want to just make clear that this process has to be completed now and if I may I would like to add to what Supervisor Tavaglione said earlier. It is not so much that the legislature will not enact a model that doesn't consider collaboration. I am a lobbyist for the Judicial Council on that issue and it is a nasty fight that I don't want to have to go through again and again. And, it wasn't that the legislature said "you know the Judicial Council is right, there really needs to be collaboration," what they said was okay we hear you Ms. Clark that there is this process already under way. We will wait for them to develop something. So in other words if there is not a model that comes out of this group in time for the legislature to be aware of it next session, they very well may very well do something on their own. So I don't want this process to get hung up because there is still no consensus on what the long term model is going to look like. For the record, in my own personal opinion, if in fact the hypothetical scenario needs to have probation funded by the state, I see that taking decades not years. It will be a huge shift.
- I think it was helpful to me when I first started on the task force to find out a little bit about the legislation that has been introduced in terms of how to appoint the chief probation officer. Could you give us a few of those suggested ideas. The ones that have died or are in waiting now.
- There was the CSAC sponsored bill that would have shifted the appointment authority to the BOS. The Judicial Council opposed that and we were duking it out with CSAC in the legislature. At the same time, SCOPO sponsored a bill that would have set up a committee that had a different sort of membership and other criteria that neither CSAC nor the Judicial Council was ready to do. So we both opposed that bill. The bills were moving at the same time and the assembly publication committee looked at June and Rubin and said, last week you were in here against each other. Now you are here together for completely different reasons. It seems to me that you ought to get together and work something out and stop with these bills. Those were the two that were in a large part were the reason for creating this group.
- Then this year Senator Brulte, the Republican leader of the Senate and not an easy author or someone whose bill you want to kill lightly, on behalf of Riverside county and San Bernardino county introduced a bill that would apply

just to those counties, because of their local problems. June went to the table and said we have this group, partly because of your direction legislature, and we would like the opportunity to finish. We would really like to avoid this county by county solve the local problems with local models deal and do something statewide collaboratively. So, if this process of developing a model right now were to stagger or stumble, by January 2003, I can see any number of county board members going to their local legislature and saying “look, they aren’t doing anything,” “you’ve got to fix my situation,” and then coming back to me and I have to give them the same talk.

- There was also a Boyd bill for the election of the chief probation officer. There were two versions of that.
- When it comes to probation, the only thing that they care about is the appointment/evaluation/termination of the chief probation officer. Getting back to do we do something more elaborate now or do we get something that is more in tune with the final result. The final result, we are kind of in this quandary because there is a segment of people that think it should all be turned over to the state and of course that’s where responsibility lies. Then there are some that say maybe part of it. The courts want nothing to do with facilities and I don’t see that changing. The end is not in sight of here. We have been dancing around for a year and a half but really the bottom line is that we need to resolve this issue so they are going to feel like they did something worthwhile.
- Something that they can live with until the long term model is put in place. It could be five years, it could be 30 years. That is the reality.
- Today we are going to work on a suggested model and then we are going to get this suggested model and keep in mind all of the points that were raised about long term which may be like trial court funding. So we are going to try to make it consistent but before we finalize anything we are going to take our discussion model back to the counties, courts and probation for comment. We are going to get a lot of feedback because this will be a great departure from the status quo. I already know that. We take it back, get the feedback, consider it, discuss it and then at our September meeting we are going to hopefully come up with a final discussion model that really has some meat on it. I think we learned the last time we went through this, we developed some potential problems and then people called to comment. This is a discussion model we are going to meet on it today and then it will go out to everybody because there may be aspects of it that we may not be considering today that may or may not be workable for certain counties. Then we are going to have to further explore what happens to these charter counties. For the non charter counties, here is a suggested model that legislation could be based on which would then have to amend all of the rest of these. Then what do we do about the charter counties and that may be something that we have to discuss in September. In the mean time we have something put together by Audrey that is just the very beginning

of the discussion that we will then reconsider in September and really flesh it out. We found that some of our first recommendations that went out were unacceptable and unworkable to some people but we got a lot of good feedback and so I think a lot of the people that were very resistant to change, didn't comment. We didn't get the response that I expected on our report. We had 43 people respond. They were generally positive. I think people are starting to think outside the box that we have been in for so many years. Why don't we start working on a structure for the model with the thought that we might change it in September. How much detail do we have to give it? How open do we want to leave it? We may say today that for instance, x number from the county and x number from the court will be appointed by the board or the court. We may take that back to the courts and they may say that this is completely unworkable, we need term designations, etc. We come back and consider all of that and then everyone has the opportunity to give us their feedback and then that way at least if they are not in final agreement with the recommendation they can know they were heard.

- One final point – we should start with 3 and try to come up with a workable model from there. If you recognize the realities that you had reported earlier and you look at the county realities it is very clear that number 3 is true collaboration and compromise is the only thing that can be done here. It probably is going to start that thought process that you can't have it all. The courts can't have it the way it is now and the counties are not going to continue to fund it with no possibility of authority. That's why we are all here.
- We will preface this model when it goes out for comment to say that the probation services task force has been working on this and at the present time probation departments are funded by counties, probation works very closely with the court and in fact for many years it has been considered an arm of the court so there is good reason to have both entities involved in both the hiring, the supervision, and the termination. Chief probation officers have long recognized that they work for two bosses. The judges may love you but if you are not meeting your budgetary guidelines, or you are fiscally irresponsible, you are not going to be there for long and if you are there is going to be such tension between the court and the board that you are going to leave.
- The boards of supervisors are looking for accountability. That is all we have ever hoped for. Item three is the ultimate in accountability.
- We have a new chief probation officer and we used a collaborative process to hire. It was very successful. I'll throw that out as an option. We did it without the color of law. We actually worked with a handshake and said we hope this works out and it did. We didn't have any conflicts.
- How did that process work?
- We had a panel of five people that served as the interview panel, the presiding judge, juvenile court judge, chair or representative from the Juvenile Justice

Commission, and two representatives from the board of supervisors. The staff of the court works on the recruitment and initial screening, they make sure that the committee sees the best candidates. They screen the candidates down to the appropriate number for the panel. Those candidates interview with the panel. Our hope was that we would not have a split vote. As it turned out the successful candidate gained the consensus of everyone. So it was not an issue. But the process worked well. We had buy-in from the court and the board.

- If you would have had a breakdown, the court has the power in your county to appoint.
- Yes
- What about supervising, evaluation or termination. Did you discuss that at all?
- Over the last couple of years we have put a process for evaluation in place. My theory is that evaluations don't have to occur every year. In our county I do all the evaluations for all departments. For probation we have worked out an arrangement with the presiding judge. I fill out a form like I do for all other departments. The court fills out the same form with all the court input and we sit down and collaborate on the evaluation.
- This model might well include an annual evaluation by the appointing group.
- We would never have five people doing an evaluation. They all might have input into it, however.
- That's what I'm saying. This may be an area where we don't need specifics. The legislation might include something like "an annual evaluation shall be conducted" by this board leaving the detail to their discretion. So there is an annual evaluation to address the problem we have seen in counties where you hire a probation officer there is no ongoing evaluation and then there is a problem. And the chief probation officer doesn't know there is a problem because they haven't had any feedback and haven't had an opportunity to address the problem.
- Will this panel of five work in small counties?
- Every county can come up with five people.
- In some of the smaller counties, the Juvenile Justice Commission is not active.
- The juvenile presiding judge appoints the chair of the commission.
- There are different scenarios across the state.
- The model is intended to say that if you have both sides at the table, the number doesn't matter. I think there should be an annual evaluation but let the locals decide how to do it.
- The reality of employment law is that if you are going to terminate an at-will employee, you had better have good cause.
- I am comfortable with the at-will status for chief probation officers and others because there still is property rights, etc. The importance of the annual evaluation is that you have outlined goals and objectives, and measure them at

the end of the year. If you are meeting them, your at-will status is found, if you are not achieving them, you have good reason to terminate.

- The process outlined is essentially identical to the process that we used in Shasta County. Both of them are processes where the court is the appointing authority and create a structure whereby the board of supervisors has important input. There is an understanding without mandate. But there remains an appointing authority. Now what isn't spelled out is who gets to fire the chief probation officer if the joint process doesn't work. One would assume that it would follow the ultimate decision. As a practical matter we don't have anywhere written that there is a veto. We have an understanding that because everyone is at the table, there has to be some acquiescence and if there is a strong objection by one the other recognizes that this will not be a workable situation. I think that is a sound way to handle it. That's why I look at 4a or 5a as being something that we ought to lean toward in creating a model rather than something that amounts to appointment by committee.
- It works in our case. In reality what we did was 5a because we are dealing with current law. The court is the appointing authority.
- Everyone understood that if you were strongly opposed to a particular person, that was a problem. It seems to me that when you have a structure when there is one appointing authority and you have a veto written into the law or some other clear unmistakable landmark you avoid the problem of having two many cooks stirring the soup.
- I believe that it follows all the way through. Whatever model you have, it seems that termination follows appointment. If you have appointment, you have veto, if you have input, you have input throughout. Consistent throughout so the rules remain constant.
- Another model is that courts have authority with veto by county.
- What I'm suggesting is a model with a single appointing authority with an understanding that is largely unspoken that there needs to be the development of a level of consensus. How do you put that into a structure that is identifiable in statute so you avoid the problem of saying "you folks just figure it out". We can say 4a or 5a. I'm suggesting that something along those lines is a rational approach to both achieving a collaborative objective and at the same time avoiding the potential problem, which we really don't have a final resting place when the decision needs to be made.
- What about the model that Audrey discussed earlier. If you have a model where you have either 4 or 6 and 2 court and 2 county or 3 court and 3 county. In order to hire you need 4 members, for evaluation and termination, 3 members.
- I like the sound of this because it requires at least one person from the other side to buy in to the concept. It doesn't require unanimity.

- If you make it larger like six, you have a broader representation on both sides and you have the opportunity for the chief probation officer to be interviewed and evaluated by a larger group than before to try to avoid some of the political concerns that you may have. It seems to me that people are all working for the common good, in my experience. You want to find the best probation officer for your county. You want that person to be fiscally responsible, a good manager, and generally if they are not, it is not just one side or the other that is unsatisfied, in my experience it's been both sides. In terms of smaller counties there are other political considerations that we should be factoring in. I guess I'm wondering if something like this could be workable.
- Ultimately, once that chief probation officer is hired, they are going to incorporate annual evaluations. The likelihood of the board participating is slim. So from an evaluation standpoint, if we go with number 3 the evaluation should be done by the CEO and CAO. Down to the committee on hiring since the CEO and CAO are doing the evaluation then it makes sense to add them to the committee, then the presiding judge and the board, and there you have four. I've struggled with the fifth, and I'm just throwing this out. There are two other elected officers, the public defender and the sheriff. The idea is to have someone independent from the courts and the county as the fifth.
- I have a real problem with my equals sitting on the panel to hire and fire me. Especially the firing. I'm not going to have my sheriff sit and decide if they are going to help fire the district attorney or the public defender.
- And that's why I hesitated throwing that out. I knew there would be a problem with the issue with that.
- I have a problem with the CEO as well, because I see myself as that person's equal. I work for the court just like that person, I just operate a different part of the court system.
- Putting the CEO on the committee is a problem. In my county we have a problem with the CEO doing that very thing. The CEO is the equal of the chief probation officer. The CAO wouldn't do it, the assistant CAO would do it. The CAO speaks for the board and will do what the board of supervisors asks them to do. Neither should be on that committee. I think it should be the judges, the board of supervisors, and the criminal justice committee.
- Withdraw the suggested model.
- I think what you are getting into is exactly what responsibility comes into that I tried to talk about before. You have a problem with certain things. We have an established way of setting up committees in all 58 counties. Either the chair of the board or the CAO does that, or whoever they have delegated that to. I think what you say about the committee is that the committee shall be made up of two county representatives, two court representatives and one other member and let each county determine who that is. One of the members could be the

chair of the criminal justice committee, whether they have one or not, they have to get one.

- The problem with just finding them is that they might not be clued into the issues associated with probation and may not be an effective member of the panel.
- What we have found to be very successful when hiring department heads is to involve a member of the public, the business community. It has proven to bring in a whole different perspective. They are making excellent evaluations based on other criteria. They don't have a vote, though.
- The problem is that the committee idea may not fit small counties the way it fits large counties. When we get to it by indicating that you put this committee together and they have to be five members and that they have to determine that fifth member ...
- Why does there have to be a fifth member?
- Even numbers set you up for failure.
- If you go back to four, and say two from the court and two from the board, then let the court and the board decide who those two reps are. I know that the chief probation officer has the peer issue but I see the CEO as the staff to the court. They are the expert in whatever the process is for all of the court personnel. It works in that way. Leave it to local decision.
- Suppose there is a loggerhead, if two say yes and two say no then it's a no.
- What about termination, you see the problem is that what we are talking about includes the termination and discipline issue. I can see a bad situation developing if you set up a structure that is vulnerable to a breakdown. You are creating an unwholesome structure when you have people that are at odds with each other, and that is why the board of supervisors are all five, seven, or nine, people and not two, four, six, or eight. I'm not sure it's a wise idea given human nature to have an even number, not for the situation where people work well together, but to put a structure in place that anticipates the breakdown. The history is to put someone in to be the tie breaker.
- To think about the battles we have had. In San Bernardino ... what would the next step be in a situation like San Bernardino where the board was adamant and the court was adamant. Is there an appeal process? What is the next step?
- In situations where both sides are adamant, I don't think you want to delegate the deciding vote to a member of the public or etc. who may not know the issues. This is really going to boil down to a management issue or...
- But if you really have that division, why would you pick a third person to select this person when the other side doesn't want them. The same would be if you can't get 3 of 4 or 4 of 6 to agree, why would you want a person to come in and cast the deciding vote. Addressing the concern that you raised, hopefully you would have a unanimous decision but the times are going to come when there are fiscal concerns. What we are trying to avoid here is the court having

the power over the county to provide funding for camps, etc., the county doesn't have the money and there is incredible tension. You have the chief probation officer in the middle. We are trying to avoid the situation where you have tension. If you don't have that tie breaker, hopefully you will have a probation officer who can compromise with the courts and county and not get the orders back and forth.

- I think the judges have come a long way from where they were years ago in terms of fiscal responsibility. Now the judges have the fiscal responsibility for running their court. I think they are much more aware and sensitive to the fiscal problems than they used to be. I find that it is unusual for people to not concern themselves when someone is not fiscally responsible. Whether it be hiring or firing or using some mechanism to bring in a mediator. If you have something to present to this group of four or five or whatever, you would lay out the facts and that should look the same for everybody. Either the person is doing their job or not doing their job. I find that whether you have 4 or 5 you are going to have a problem where two want one thing and two want the other, and that person should not be hired. If you are not going to satisfy both sides, that person should not be hired.
- If there is a loggerhead on whether the person should be hired, maybe they need to extend probation period a little bit or take more time to look at the facts and work it out. You can come up with a logical way to deal with the issue.
- For example, if you bring in a third person, business person, and you say we don't know whether to fire this person or not and the third person says, yes, all of a sudden that person is sued.
- Maybe it makes sense to require the decision to be unanimous for hiring and firing, since it's such a major decision. Like jury trial situations, you need the four votes, if there is a two, two split, why would you want to hire someone that one side is against. If they collaborate, having the four people say yes would make for a good chance for success.
- It starts to auger towards what Judge Jahr says in terms of appointing authority and veto power. It sounds like one side appoints and the other side has veto. It's a much clearer line of reporting relationships, authority relationships, rather than having a committee which I can see now as meeting once to appoint and once to evaluate and once to fire.
- I'm not sure that the same people have to be involved in hiring and evaluation. That group hires but the group that actually observes the work of the probation officer should be the one that evaluates. That's why boards of supervisors don't evaluate the department heads. The CAO knows the job they are doing. I don't think that that committee flows to all four of them. The final elimination of the position obviously has to go back to the judges and the board of supervisors. Evaluation should be done by the people that observe the person at work. If it isn't we have a problem.

- Some times you have two great candidates and you can't come to a decision between the two of them. That happens a lot it may be a 3-2 vote.
- As a board member, you negotiate with the other side and come out with a 5-0 vote.
- But you may not if you have strong opinions on both sides. This is a beautiful illustration. Add to that there is a third person who is a little mediocre compared to the other two. And everyone compromises and goes with that one just to make it unanimous. I think that the unanimous vote thing could produce a result less efficacious.
- I was hired on a 2-1 vote. I knew it within 24 hours but I accepted the challenge and was successful. The point is that you are probably never going to get a unanimous decision on anybody. Even when I hire people on my staff that are managers, I rarely get agreement from all of those involved.
- But you want more than 50%.
- Yes.
- If you had an even model, 3 out of 4 or 4 out of 6. You want more than 50 %, it may not be possible.
- Or not, depending on how strongly you feel but to give that one person whether it is a supervisor or judge the total ability to make the decision and too much power. I think with 3 out of four or four out of six, it has to include participation from both sides.
- If you have an equal number then you don't have to worry about the tiebreaker. With equal representation, you don't have to worry about who the fifth or the seventh member is. Then you need at least 3 of 4 or 4 of 6 you have to at least have collaboration or you are not going to hire the person. With Bill, what you are saying is if you only have 50 percent of the people supporting you, you are not going to get hired. You need more than 50 percent, how much more do you need?
- You need a majority.
- I do think that works for appointment but I'm thinking that we might need to spend some time talking about the termination. That's not a model that we work with.
- Have we come to some consensus on the appointment?
- I register dissent on this. Jahr: I believe there must be one appointing authority and I believe firmly that there has to be a structure in which input from the other side is heard, where it be called veto or something else ..
- We don't have to go down to one model right now. With two models, could be equal members that takes a majority, the other model is equal number but one with appointment responsibility and the other with veto power. And then of course the discussion of who has appointment and who has veto power.

- When we go back to our principles, if we have one appointing authority then the one authority also has fiscal responsibility. Unless part one can buy that, we need to share it.
- So you are saying if we go to this model, the counties would be appointing and the courts have the veto, since the counties have fiscal responsibility. If we want to stay with that principal. Or if we go full cooperation, somewhere along the line you have to go back and extend that down into the governance model and can you go there?
- So your suggestion is a model with an appointment power with a veto.
- Call it veto, call it input, I haven't taken it that far but a structural relationship that compels collaborative participation in the process.
- So we have two equal members. By definition, if there is an appointing authority one of the two collaborators is charged with making the appointment and similarly the disciplinary decisions.
- But would the committee have equal numbers of members.
- My concern is that if you have an appointing authority with a veto power, when it comes time to remove that person from office, one side can say bad job, the other can say great job and where do we go from there. I have a problem with that. Who has the vetoing power then? If the judges are the appointing power, they can keep them in. The board would have no say on that.
- The flip side is also true. Unless you vest one entity with the authority you are going to have the potential for all kinds of conflicts in shared relationships. I fully understand the issue. One of our hold ups has been how do we reconcile that and then try to come up with something that makes everybody happy.
- We may need to look at something different for the termination aspect as opposed to the appointment. The first concept is equal members and the majority for decisions. The alternative concept is an appointing authority with a veto power. I'm assuming that if the counties now have fiscal responsibility, the counties would like to appoint in this process with the court having the veto. And the courts would like to maintain the status quo, the courts would like to be the appointing entity and let the courts have the veto.
- Any other variations of models?
- Isn't that model number 9?
- I wasn't contemplating that. I was contemplating a constant appointment authority meaning the final determination both with respect to hiring and discipline/termination.
- It would be appointing, evaluating and terminating. Veto by the other side. Quite frankly, I have to tell you on the terminating side, I'm not sure whether you can have a veto. I think you can probably have a veto on the appointment side of the equation, input on the termination/discipline side. I think from a legal perspective..

- So, that's 9.
- No, the key word to say x appointment with y veto and x evaluates, disciplines, dismisses with input from y.
- That is what he's doing with either 5a or 6a.
- In other words, that flip-flop creates more problems than it solves.
- I think everyone is in agreement with that. Either way it goes you don't want court appointing/county terminating or vice versa. It makes sense to have the same appointing/evaluating/terminating authority with veto or input from the other side. You wouldn't be flip-flopping back and forth.
- I recognize where everyone stands on who ought to be in which position, but the flip-flop thing concerns me.
- This is something to think about. We can come up with one model today or we can come up with two or three that all support the principles and put that out for feedback. We don't have to finish up today.
- I think that would be a mistake. If we send out three or four options, you are going to get various reactions about the various models. Or we can send one model out and get one reaction. I agree with cutting to the chase with one model for comment and I would like some clarification from June as to why we need to do that. The way I understand it, we are under pressure to do this.
- We have to recognize that whatever we come up with will be controversial and a lot of people will not like it. But that's just what we are dealing with. So we have to move forward.
- I'd like hear from Liz regarding the county perspective on number 3. I think 3 is interesting from the county perspective. I think principle number 1 is most consistently represented in model 3. You have authority and responsibility connected and also principle number 2 where you have courts and counties collaborating. I think you could argue that until the details are fleshed out in terms of the other models we have been talking about, there is not necessarily a connection with authority and responsibility especially on fiscal responsibility, the liability side. I'm not comfortable with what we've discussed if there really is no connection there. So I'm not sure that we from a county perspective would be able to do that. I think that is why we are, I forget who articulated this, but that's where we need to do this. It is important to keep those connections and you achieve that best by a collaborative process.
- It would be interesting to put out something that is clear and decisive. Okay we want collaboration and cooperation, we all have to compromise and then let them articulate their arguments as to why they can't do that. Why won't this work from your perspective? See what these arguments are. Are they turf issues, are they against change, or are there really legitimate reasons as to why that can't work.
- I would say that if you put that proposal out and seek input you are describing, it would be the most valuable. Rather than putting out other proposals that, to

me, seem vulnerable to legitimate challenge from one side or the other. With this one, they are all in the same boat, we are all working together, we all have the same concerns, it is something that I think while might generate some kind of agreement in another way it will be less likely to generate legitimate substantive opposition. So I think we would wind up at a point where not everyone will be happy but hopefully something that can work.

- This is where we are. We have two models we can further discuss. We can add any more suggestions. We should probably talk about evaluation and termination, if we want a similar or a different aspect. We can go back, rework and then finalize. We want one model. It may not be unanimous but we can certainly recommend a model with concerns and then we will be aware of those concerns. The models we have are equal representation either four or six members with the court and county having the discretion to appoint anyone they want serve on this committee. The decision would be by majority for appointment. We haven't talked about evaluation or termination.
- The second model is an appointing authority who can also evaluate and terminate with the other side having veto or input.
- Any other models to put up at this time?
- To clarify, when you talk about equal numbers you mean not only that you need four or six committee members that there will be either two or three from each side.
- Right.
- Two from courts and two from county, or three from courts and three from county.
- The parties can designate their two or three representatives.
- Yes.
- One caveat, if you get over three people from the county, you run into Brown Act problems. Two members is okay, three probably could get into trouble.
- To specify that they are not subject to the Brown act in the legislation might get us by.
- There can be three county representatives as long as they are not all elected officials. I believe that is right.
- Can't we say that the committee will be made up of no more than six members and let the counties decide. That gives the locals flexibility.
- Equal commissions at no more than six.
- Rubin has raised a real concern.
- It's not a concern that should be a roadblock but it's something we should consider when designing the legislation. Language like Mike suggested may get us out there, specific exemption and recognition of the existence of this personnel issue and that you have an exemption under it 6400 by sections. All those things can be worked out, I'm just saying we should keep them in mind.

- Does the personnel exemption to the Brown Act cover evaluation, hiring, and terminations?
- It does.
- We have two suggested models? Under Steve's suggested model we have already discussed evaluation and termination. Under the joint committee model, the suggestion is membership not to exceed six equal representation in court and county. Evaluation would be conducted on an annual basis by a representative of the county and court.
- I would encourage that if we have this joint committee, that they meet on a regular basis. There is a lot of value in having them meet at least annually to review the performance of the chief probation officer but perhaps on a more regular basis to get updates so that you don't get to the point of termination and not have the knowledge about the work of the employee.
- I think there is value in meeting and maybe a quarterly meeting with a tour of the facilities, etc., etc., but the evaluation of the person doing the job can't be done by someone who doesn't work with the person. You can't evaluate the performance of someone based on what someone else is telling you. That has to be somebody that has to deal with him or her.
- I think you have the local county decide.
- Do you want to leave it a little open? Do you want to leave it at annual evaluation, conducted by the counties and the courts? That way if all six or four of them want to be involved, or they want to ask the CAO or CEO it gives them the flexibility to do that.
- What has been happening in some counties is if probation officers are doing a great job, there really is no annual evaluation at all. As long as everything is going well.
- I would say regular evaluations, as opposed to annual. Again, how descriptive you want to be to the counties. We can say they should conduct regular evaluations and then the county can decide how often to do it.
- Well, if we do that, regular can mean once every five years or weekly.
- You can say no less than.
- Wasn't that your point that maybe eighteen months is appropriate?
- Yes. I always run up against this and maybe I'm just being desensitized to the issue of at what level do you have to fulfill five different counties operations. If we set the policy direction and we want them to evaluate the chief probation officer regularly but meeting again in the 30th every year. I grapple with that general concept of how descriptive we need to be.
- Who in local government is not evaluated annually?
- Our chief probation officer.
- When do you do it? Regularly?
- Not at all. Some court executives have never had an evaluation. There are others that go through it every year.

- If you say regularly and it's only every five years, when you go to terminate that person, that person has more of a chance in court if you haven't given them an annual evaluation.
- I agree with Judge Jahr. An every sixth month evaluation?
- Is this splitting the baby in half, why don't we say no less than eighteen months for an evaluation? Is there anyone who would say that an evaluation needs to be more frequent?
- The problem is that if you put them on eighteen months, they are on a different rotation than everybody else.
- But you can do it every year, you just have the flexibility to do it less often.
- At least every eighteen months.
- The way we have been doing things, we have 20-24 reviews and I will tell you that they are not held on a certain day in a certain month. They are regular, yes but there might be one at 16 months, one at 9 months and one at 14 months. But they are not all in the same month, so I think regular is sufficient for my purposes.
- From a practical matter, we are talking about proposing legislation. If you put something like that in the legislation, what happens if the county doesn't do it. Do you really want to go down that path? It seems like we should give people the opportunity to be responsible with a statewide policy.
- We gave people that opportunity for the last how many years and look at how many problems we are facing now.
- I'm not saying that it is wrong, I am just saying that we have been sitting as a task force for close to two years now. And that's part of the problem that we have uncovered. That there are no standards for these people. The problem that we were talking about as this group was that there had to be some kind of standard for these people.
- Rubin's plan seems to be the most congruous to everything that was said, by saying not less than eighteen months to take into account different situations. But it is unquestionably a standard by which people must adhere to.
- Not less than eighteen months?
- There shall be regular annual evaluations not less than every eighteen months.
- You want to say something to encourage annual but not more than eighteen months?
- Do you want to word it that way? The review should be conducted annually but no less than at least once per eighteen months? You know annually like you said, is not going to be every January. You could do it one year in January and the next year in June and it would still be annually. But then you have got five steps, I'm assuming that those are tied to merit. And I'm assuming that you get those in on a yearly basis. Those aren't just given because you look good. They get incentive bonuses based on merit. You pay for performance.
- Isn't that an annual type review?

- Yes.
- It might be less or more than that. It's not necessarily the same day or month.
- But it's annually.
- So you are voting for annual?
- I just think there is an accepted practice about giving evaluations in a work environment and that accepted practice is generally one year or annually, if that is a better word.
- Any disagreement with annual? That still leaves some flexibility. It doesn't have to be January every year. It can be in the calendar year 2002 and the calendar year 2003 but at least annually you have an evaluation.
- Once every calendar year?
- If we say should be conducted annually?
- Yes
- Do we want it to be mandatory or encouraged?
- If we are suggesting legislation it should be mandatory.
- Shall be conducted annually – agreed.
- Moving on to termination:
- Under the joint committee model, would that work the same way? A majority to terminate? What happens if you have a tie?
- Does that include things like raises, promotions, any decisions of discipline?
- I would think so.
- Does this apply to all issues? Discipline? Salary?
- The committee can make recommendations to whoever has the authority to make decisions. If you are recognizing that the committee will set the salary or bonuses or anything like that, I think we run into trouble with the law? They can evaluate and make recommendations to whoever has the authority to give them adjustments in their compensation, I don't have any problem with that.
- This is one of the issues we've been raising but have not discussed. If the chief probation officer is appointed under this proposal who are they an employee of? Where is the employment relationship. Is it this committee? Is it the county? Courts?
- Apart from appointment and termination the chief probation officer would be a county employee without any benefits, retirement, or anything else from the courts.
- The committee can recommend but, if depending upon the individual county, they are going to know in that committee what their county system is and whether or not there are parameters for increases or raises. If there is the ability to give a raise and they recommend it, then the county, based on the recommendation, I would think could implement it and if there is no ability to make a recommendation for a raise because it is not available in that county, then you wouldn't be considering that issue. You would be doing the evaluation. That would have to be handled on a county by county basis.

- What about termination under the joint committee model?
- Any kind of discipline should include termination.
- What are routine recommendations concerning discipline for chief probation officers?
- The only thing I have ever seen is termination.
- Is there other routine discipline for chief probation officers?
- You could suspend them, reduce the pay...I imagine that there is any number of things that you could do.
- I was only bringing it up so that it wasn't left out as a theoretical potential. Termination seems to be a subset of the larger topic.
- What ever is good for the hiring process, always can be good for the discipline or ultimately the termination.
- Before you get to that, there are a variety of things you can do in terms of expectations and setting objectives.
- What do you do? The easy decision is the hiring decision. The harder decision is the termination decision. What do you do if the courts are completely satisfied with the probation officer and the county is completely unsatisfied? Or vice versa. You have a very fiscally responsible chief probation officer and the courts do not like this person at all. So you have a committee of six and the vote is three-three. So you don't have the majority but you obviously have a problem. It is probably doubtful you will end up with the court and the county equal-equal and not have the additional vote to terminate. Is that a workable situation or do you need a slightly different option for termination? Everyone will be happy at the hiring because you need a majority. It's the termination that becomes more problematic.
- You really convinced me earlier that if there were problems is was okay because the process is bringing people to the table, where I was thinking about veto problems. The problems there were that the counties were powerless in the current structure. They have no ability to force the court to the table. How I think it will work doesn't really matter. But I'd like to hear whether in fact that by forcing the requirements for a majority, we can force them to the table and then they will work it out.
- I thought it was sounding pretty good and then...
- In a large county, Yes we have a problem. There are many other points of irritation and points of concern that will surface in the future with folks.
- It could be that if the system is working they way we hope it would work and people are operating in good faith and not for political reasons, you would hope that a decision to terminate would be well grounded. Even with at will employees, there is generally cause and you would have either four of the six or three of the four. But as a first step, maybe that is the way it could work. In the event that there is, does everyone agree that if there is a hiring decision that is split equal-equal you don't hire? You don't need anyone to come in and

mediate that one. Okay. For a termination decision that is equally split there needs to be a mechanism to address that situation. Hopefully you wouldn't get to that, but if you do for whatever reason, there has to be a mechanism to address that concern. A neutral, impartial well-grounded, well-reasoned, well-informed person who can help the courts and the counties work through this. Now who could that be?

- That opens up a whole Pandora's box from the point of view of the plaintiff's lawyer who represents the employee who just got fired. They will have a feast because a mediator from outside came in and fired this person.
- The other way to work it is if three of the six or two of the four are dissatisfied and you don't have the support of fifty percent, and that person is terminated.
- Do we need to create legislation to address the situation that may exist infrequently?
- It's not possible to create a law that solves everything. On the other hand you can't make a law that assumes collegiality and geniality. That's why, respectfully, I think that the joint committee model is fatally flawed and I think that it really becomes apparent when you look at the termination side. I respectfully submit that it is as potentially problematic on the employment side. That is why I have my concern with it.
- What about if you have a majority to hire and then 50 % to terminate. You have a majority to hire, that forces collaboration. If it takes half to terminate, that way if there is dissatisfaction with the chief probation officer on the part of either entity, the person is terminated. Then you are not bringing in a fifth person, but if they have lost the confidence and support of either the court or county, they are terminated. It's easy to have a majority that votes to terminate, but in the event that there is not a majority, if half of the members are of the opinion there should be termination, then maybe that's the way to handle it.
- What you have just described requires a higher level of accountability.
- Bill made the point that when he was selected, the vote was 2-1 and came on board with the hope that he would gain the confidence of the third person. You would always hope that when you are hired, you are hired by more than 50%. If you can't gain the confidence or if you can't keep the confidence of more than 50% and you are down to 50 %, should you be retained? Isn't that the point where you terminate? However it ends up court or county, isn't that the point where you terminate? You can't really worry about the liability because if there is a termination, there is going to be a lawsuit. If there is any type of joint responsibility they are going to look at both entities. That is just how it's going to be.
- What you are describing, there are two sides, the court and the board and they are both looking for accountability. On the board side, they are looking for accountability from fiscal side and from the court side they are looking for

accountability for services provided. You are going to be much better positioned to be accountable to the court if you know they are not

- I don't know that I wouldn't then respond to the fiscal side of my problem and take care of that and watch the other side fall apart. What happens if the courts are saying we want these services, so you provide these services and the board says you aren't being fiscally responsible because we really want you to take care of this. This is where we want you to place your fiscal efforts.
- It is hard for me to know how to keep anybody happy in that situation.
- Isn't that the reason for the annual review and dialogue?
- But if the court and county can't get together in terms of their dialogue with me, then my annual review is not productive.
- In the current scheme, the court can do that. But the county can't do anything about it and the court knows that. In this scenario, the court must be aware that you lose your job if the county becomes unhappy. Would the court continue to push you into a position in which you would lose your job?
- It would be counter productive
- It seems like that model would force the courts and the county to collaborate. That's the whole point.
- But how could you reconcile? How is it going to be truly possible to do that other than shifting the responsibility, other than promoting with every mechanism that we have to force collaboration? You both lose if you don't collaborate under this model.
- It was interesting to hear about Los Angeles. Los Angeles is very happy. The board of supervisors appoints, they get input from the judges, the judges are having a problem pushing the probation officer in terms of services, so that's not happening. In San Diego, we have heard many times that chief probation officer is appointed and annually reviewed by the board, he reports to the judges and they are not having a problem. I think that in those counties where the board appoints with input from the judges, the judges are not pushing the probation officers to provide a service for which there is no funding. We don't see that happening in two of our largest counties.
- The perspective of the board in those counties from what I understand is that they understand that that is the ability of the court to push. They don't have the resources as long as they are responsive to the board and do what they can do. We can't control the court in demanding services.
- The court is not making a recommendation to terminate the probation officer because the services can't be funded. The reality is that the courts are always going to be pushing for more services there is not going to be enough funding for everything you are always going to have this tension. But we are not seeing probation officers terminated for not providing services where there is a lack of funding.

- I'm not sure that there isn't some truth to that. If I can't provide the juvenile hall the way the judges want me to provide the juvenile hall, I can find myself behind the eight ball and the county may not have the ability to do that but the courts will think that I'm not doing my job and that I'm inept at what I do because I can't get money from the board. I can't convince them to deal with juvenile hall, therefore, I am not doing my job.
- In this collaborative effort, are you not providing a forum where the court and county are both represented and can communicate that the probation officer is doing everything they can and the mechanism is not allowing him to satisfy your wishes.
- One would hope so.
- Right now you have protection.
- I have protection, because if I am doing the bidding of the court, if I'm doing the job the way the court wants it done, the board can't fire me. They can make it difficult for me if they want to let me go. The point I'm trying to make is that generally that doesn't happen. Generally, if I'm following the dictates of what my judges wish for the agency for their services, I am pretty well protected.
- Again, what I am saying is that unless people working in that situation can come up and carry out their duties, the forum we are talking about is relieving that pressure where if in fact you would get the argument in favor or against you, where the courts can convince the board of supervisors of that responsibility and take the pressure off the chief probation officer. It does provide the mechanism for the chief probation officer to be terminated but it also provides a release valve.
- You can't remove the counties in which the vast majority of which have the court as the appointing authority, every one of those counties. That's the flip side. San Diego and Los Angeles have a nice arrangement because everybody gets along, but I think in most counties, the appointing authority is with the court, there is collaboration.
- I will say that there is more discontentment than I thought. Over the last years I have been talking to a number of counties where there are problems that may not arise from probation but there is definitely conflict between courts and counties. I have received calls from various judges on how to handle evaluations, discipline, and so forth. In areas where I had heard things worked well. I don't know what the number is but it works really well in a number of court appointing counties but some counties probably not.
- Audrey has also gotten calls from counties that want some suggestions, guidelines on this appointment. What are we are coming up with in terms of handling the appointment process. It's not so much the termination although we have had both appointment and termination questions.
- Maybe the termination should be entirely separate. Clearly that brings back the question of who does this person work for.

- The court.
- That's always been the case. Before trial court funding which was kind of the catalyst for this kind of thing, the judges always had the authority.
- Isn't that what we've been working on for the past two years, that they work for both?
- Until we straighten out the long term governance model, this is an interim step to allow them to get along, the direction we need to go is toward collaboration. It's basically an interim step we have to take so that we can survive to the next step and really work this out with the governance model. You are absolutely right, there is a question of who this person works for. The answer now is legally, that they work for the county. They are employees of the county, which is a dilemma we cannot escape.
- I think it is difficult for some of us to see the problems clearly. I try when I represent the board and county viewpoint and bring forth their concerns, however, I have difficulty sometimes sharing those concerns because I have not experienced these problems. Our court and board get along fine. We haven't had the problems to deal with. Obviously there are courts that feel adamantly about something, that are not necessarily taking the courts position on this because of personal experience. And probation officers, the same way. I can't imagine that any of the probation officers since I've been on the board in Shasta have had a problem with who their boss is. Judge Jahr agrees. It's just not an issue. They work for the board, they take orders from court, and I don't think it's been an issue.
- I didn't mean to take this off where we are going. Obviously we do need to develop a model for the appointment, evaluation, termination of the chief probation officer, I recognize that. I guess my concern is that when you get to the termination side of things you get a real sticky wicket at the committee.
- It seems to me that there is a consensus that we need to resolve the issue of financial responsibility and liability but I don't think there is a consensus that there is a driving need for a statewide single way of selecting a chief probation officer. Many counties are happy the way things are. What is wrong with just addressing the issue that is presented to us by saying you can do it any way you want, but whoever selects the chief probation officer has the financial responsibility. A very simple solution that doesn't require us to force people to change the way they are doing things when they seem to like it.
- The problem is that again the whole issue that formed this task force was that people were not satisfied and were willing to sponsor a legislative solution to resolve this issue one way or the other.
- They seemed to be satisfied with the selection
- No
- The legislation was designed to change the selection process.

- The bill in San Mateo six years ago. We just had a fundamental problem looking at an organization side. We were going through major budget cuts and other things in the mid 90's. This doesn't fit in terms of their appointing responsibilities, etc. We addressed this from the philosophical standpoint that we are not going to solve the problem right now we recognize that this could be a problem. I don't know if there is a simple solution. If the court wants to appoint, they get the fiscal responsibility.
- Is that fiscal responsibility or the multimillion dollar law suits that go with that if there is a wrongful termination or something else.
- It's more than just liability it's accountability as well. The process here is designed to put in place a system that recognizes the competing needs of the courts and the counties. And that what endows of this process, recognizes that we need something that both sides can live with so that we don't have battles between the court and the county. The solution ideally would prevent that wildfire from burning in the first place because there is collaboration all along.
- It's not just the legal liability.
- Some of the legislation has taken away the responsibility of the court and county to select the chief probation officer and places people on a commission who are not involved with the operations of the probation department. So it is not a good thing for the county, the courts or the chief probation officer to be selected by a board of individuals who may or may not have adequate information. I don't think everyone is happy with the way things are going. Some counties are happy, they are okay. Either we suggest legislation or it will be suggested by an interest group.
- May I suggest that if it is the view of this group that the model for appointment should be this committee, then it should follow that the exact same model has to be used for discipline and termination. I don't think we can have a hybridized model without creating any number of different problems? I'm not trying to set it up for failure, I have my views and my views will remain my views whether it is hybridized or not, but if it the consensus of this group that a four or six member committee should be recommended to be created by law for the purpose of appointment, then it should be empowered to address specifying, frequency of review the business slip of discipline and termination.
- You are saying it has to be a majority on selection and a majority on termination.
- That is how it is with the other one.
- The appointment issues to me are really serious if you have something less than a majority.
- If you want to receive the benefits of a government committee structure you have to be prepared to accept the risks that fall up on it. I don't see how you have a person who is hired by someone and fired by somebody else. I'm not trying to discourage at this point, but if it's the will of this group to appoint by

joint committee structure all down the line to be implemented locally in the parameters of the law. It just follows that the committee is the one who would evaluate and discipline.

- You get the same result. They are going to deadlock either way.
- We can't solve every problem. Setting my own views aside, it seems to me that you have to have one structure.
- That is exactly what Denny was saying. If you stay with the majority vote all the way through you may not be able to answer every county's problems. If there is a stalemate in a county, you may not be able to answer that. They are going to have to work it out.
- And if it is a bad enough problem, eventually it will work out because it will go to the public to the elected board to solve the problem.
- It gives the chief probation officer more protection, as you can't be fired by a simple 50 % it would take the same to terminate as it would to employ. You have the same structure in place all the way along. That avoids a lot of the employment issues that could well be raised on a termination.
- I have been thinking this is an interim process and we are going to create this whole body that centers around this issue which may change. It seems to me to lean toward the "or" proposition, vesting one appointing authority with that responsibility or the veto. Rather than creating another new group.
- Does this go along with our principles?
- I'm not sure that it does. We don't want to come up with a solution because it goes along with our principles, we want to come up with an interim solution because we want to prevent some legislative action. I think if we can include the principles, that's a great thing. Maybe that needs to prognosticate about the ultimate outcome. But it's still an interim solution.
- I hate to sound argumentative with myself but it could be said that the joint committee structure creates a solution to the problem that exists it could also be said that to do so to come up with that is to institutionalize the important status that the probation officer suffers from about which we are served and trying to find a solution. In other words, by finding a solution to appease the people on the edges of legislative efforts we may be digging a hole deeper. That is my personal view. I'm just suggesting that the role of this group to form the joint committee, then the symmetry of top to bottom handling.
- The appointment model, the reality is that the court would like to appoint, with a county veto and the county would like to appoint with a court veto. When you get to termination, it's not symmetrical as I understand it. The termination is a terminating authority with input from the other. It's not connectable all the way down. The court would like to terminate with input from the county and vice versa.
- Which if you follow the logic of that model through, you get right back to the same you're hiring on a 4-6 vote or a 3-4 vote. If you are hired with input that

means at least one person from the other side is supporting you and if you are hired with veto.

- There is one distinction with the veto concept, if you have an appointing authority it's true that someone can stomp that decision and that person ultimately makes the decision. In the joint committee scenario, there is a new entity coming in that doesn't exist, it is an entity in the law. If it evaporates, it leaves the probation officer out there with someone else to be accountable for or it remains in place as a thing a legal entity, and it deals with the chief probation officer and subsequent evaluation discipline. I think that is a distinction.
- Let me ask this: June, you have been through a lot of lobbying. Let's take the joint committee model. Give us your view on how that would be received and then let's take the appointment with veto, the termination with input. I want you to take the court's position, and Liz and Rubin will take the county position.
- How would the courts react to that and how would the counties react to that in either position?
- The first thing that I want to say is that I think the legislature will accept any proposal that has consensus by the interested parties. If the courts and the counties and probation are supportive, I don't think the legislature would disagree.
- The only caveat is that their constituents buy in. I think that was part of your whole concept.
- When I say consensus I say the real consensus.
- We have to get something that is sellable to our respective constituents.
- Which brings me to my second point, what is really important here is which of these models can we sell to our constituencies.
- That's what I'm after.
- Again, with all due respect, I understand what you are saying but I think that the model that has the best chance of achieving the consensus that we have to have is the model based on number 3. As far as the committee, that is a mechanism for carrying out number 3 and I frankly have no feeling about whether it's a committee or not. However you carry out the collaboration, #3 has the collaborative characteristics that I suspect have the best chance of selling to our respective constituents. To do the flip-flop, with the court having appointment, etc.
- The courts would love to have something in the statutes saying that the court has the authority to appoint with a county veto. That part would be an easier sell to the courts than the collaborative model, but I have to be realistic and realize that that is not enough to have my constituents support it. And I suspect you would say the same about the reverse. My bottom line again is that realistically in my opinion the model that has the best chance of achieving the kind of consensus that we need in the legislature is the collaborative model, #3.

- We need to come up with a proposal that is not going to get sidelined and number two that proposal needs to be a workable proposal. I wonder if the proposal we are talking about is workable.
- Which proposal?
- The proposal with the equal number of committee members.
- Are you not agreeing with the model or the committee?
- I think that #3 as a concept is good. The idea of the committee is questionable.
- I think that June has laid out the negatives and positives. There is one thing that we need to respect. If the state goes on a model, I'm not sure the charter counties will be willing to change. That's one big county that's a charter county and that will be problematic. With that in mind, collaboration in a vacuum. We want people to solve issues before they become problems. There are problems with decisions made by committee, there always are and I don't know how this will sell. We are looking at this committee to make the decision but do we asking the counties and courts to think about it do we need them to make a decision or make a recommendation that can be the use of the committee. For example, in a county like Los Angeles, you don't change the appointment process, you dictate to them that they have to collaborate so that the courts and the county are involved in the appointment, evaluating, etc. in Shasta county, you've always done it de facto.
- But the decisions that they will be making would in fact be a decision that can't dismiss the recommendation arbitrarily. In other words putting pressure on the parties to collaborate.
- 3 is sellable. I think shifting the authority to one or the other would not work for both our constituents.
- I basically agree with everything that June has said although I don't know what is sellable more to our constituents other than we are going to have a problem with
- The second approach is to appoint an interview panel mandated by statute that will come up with a thing appointing authority either by statute to the county or court.
- Does that solve the problems where you no longer have this entity out there that's created with the employment issues.
- I have listened to Rubin's analysis and the area that I am putting on my lawyers hat is basically the concept of what it would take for the appointing authority, be it the county or the courts, to discard the recommendation. If they discard it what reservation it would produce. It is certainly a way to finesse the problem of Los Angeles and others that don't want to change anything but at the same time are willing to include this. I think what it takes is back to quite frankly is number 4. I think with Rubin's suggestion is in substance and effect is kind of a vetoing sort of deal. I'm not saying that he's saying that, I'm saying that is how it feels to me.

- Actually I'm not, three is actually the one with the real merit in terms of mandates in the system that we don't have now except in those counties where the problems are resolved. A lot of counties have a system like Solano County without the liability issues being involved. And they worked it out and trust me, three years ago when they were sponsoring that legislation, I was getting a lot of phone calls saying this problem has to be resolved.
- None of these models solve the probation problem. They don't solve the appointment problem. They don't solve the governance problem, the fiscal problem, or the service problem. It's an interim step. I don't know if even other than emphasizing collaboration with the recommendation of principle 1 and going out there to sell it to our constituents, that we are going to get anything.
- So Rubin then, what you describe is a situation where the committee made a yearly but not binding decision to the appointing authority.
- No, just one.
- What I'm asking is if you are using number 3 as a jumping point, I was hearing that to mean that there would be collaboration at the final decision making process by the final decision makers. And, if this committee to committee would be that with a very strong recommendation. What I understand of charter counties is that the local voters voted for something. Is that not right? So it seems to me that we can't mess with those anyway. I'm assuming that we can't force a county's voters to adopt the recommendation anyway. So I'm setting them aside and not really thinking about LA for instance. We are then dealing and in fact we were talking earlier that they don't have a lot of problems, leaving them aside and if you come up with a collaborative process that involves both entities you have gone far to hopefully prevent the kinds of problems that come up when one side or the other is powerless. This has open communication on going from the hiring to the termination. If you don't have this kind of wildfires breaking out because the powerless entity is desperate to change things and they can't. This would prevent that.
- I see the opportunity for that as well. My original thought was that it was more like the existing system with the implementation of a committee. But when I was listening to the conversation, this was actually the entity that was going to make the decision. This was different than I thought.
- That just came up today.
- If we make the committee advisory only with the recommendation to be appointing authority and the appointing authority decides not to appoint that person because you have the ultimate power, you create a lot of legal problems. If the body is advisory only, that is something to be encouraged rather than legislated. If the body is to be the decision making body, then you are collaborating for the final decision. If it is advisory only then you are making the recommendation to the PJ to appoint. The PJ you would think would be on that advisory committee to begin with and the juvenile court

judge. I would envision that you get the PJ, the juvenile court judge and if there are six, somebody else from the court. You are either going to make the decision or make the recommendation to the appointing authority who is the PJ who is sitting on the committee to implement that decision

- At that point, you are just rubber-stamping it.
- That's why I think we moved so quickly today to the committee being the decision making body so that you avoid any potential litigation concerns by a recommendation from a body to an appointing authority and the appointing authority says, I don't think so.
- Are charter counties off the bill?
- That's a tricky situation, there are legal difficulties in changing the mandates in charter counties.
- This could address just general law counties.
- That is probably the safest way to do it but you have to realize that there are some very big charter counties, with populations exceeding 50% of the entire state where the appointment authority is the board of supervisors
- We don't know if that was adopted by a board rule or adopted by charter.
- It has to be part of the charter. A charter county is authorized to have a different selection process. Not all charter counties have the different structure.
- But counties have identified to us that they are following the general law, they are actually not, they are charter counties that have a provision but are quite different from WIC 270, which makes things difficult.
- A recommendation will apply to all non-charter counties and those counties that have a charter that have that exclusion.
- That will create difficulties for those counties because they may have neared the language of WIC 270 and others may say follow the general law.
- You can draft legislation to take care of the problem. Any charter county that has special relationship with the court.
- So that applies, as Rubin pointed out. We have charter counties that make up more than 50% of the California population. We are talking about the remaining counties of which there are many. We need a recommended model, a discussion model to take out to the various groups to get feedback. It sounds like I hear people saying that we want to finalize this with concerns, comments or reservations but the joint committee model consisting of an equal number of representatives from county and court not to exceed six with a decision to hire, discipline and terminate being the majority of the committee, with annual evaluation. How did we put that?
- Semi Annual?
- That would be prefaced with the discussion of the current situation in California, explaining again, we have already explained a lot in our report. How probation officers are appointed now, we could include that same discussion. What happens in the charter counties, what is going on, the fact that

probation officers are county employees who are selected by the courts in some counties and in others by the board of supervisors? We could move into the principles that we have discussed at length in our interim report leading to this recommendation, which would encourage collaboration and cooperation in the selection of a well qualified chief probation officer who is currently really working for both the county and the court. We could get feedback on this model from all of the groups that we have gone to before. Any comments on this? Any further discussion on the other model?

- Call for a vote?
- What happens to the liability?
- What we were talking about earlier and whether we put this into the model now or later. If you are being jointly hired, supervised and terminated, it is joint liability.
- Not necessarily.
- I think we need to spell it out in the legislation if it is going to be equal liability for the employment related items for the chief probation officer. We need to say that.
- Include equal liability? Or does the county want to keep it?
- I don't see how you can legislate equal liability when you think of the many scenarios involving claims to sue. Example, under this proposed model, the court says resurface the floor in the hall, the probation officer goes to the board and they say we don't have the funding for that, so they don't and then they are sued for the trip and fall. Do we expect the state of California to agree in legislation to be equally responsible?
- I think Rubin is limiting it to liability for the chief probation officer employment issues only.
- Now you are in a whole other world.
- You are talking about two different employment issues. One has to do with the rights of the chief probation officer, that I agree you can put your arms around. If you go beyond that you get into areas that can't be defined with that level of precision. My slip and fall I can make a good argument that that was the responsibility of the state because of something that the chief probation officer did at some other point to prioritize something ahead of the resurface. You are clearly responsible.
- I don't necessarily agree that we couldn't define employment related issues for shared liability. We have a whole issue of governance responsibility for all the other aspects of our new roles and governance model that you have. If you don't include the concept of shared liability relating to employment issues dealing with the chief probation officer then you don't agree with principle one: existing law which I'm not so sure is as clear as some of the members of the court have expressed, that if we make a decision we are responsible under

case law. Case law holds us responsible. To hold us responsible in another stage besides the courts but we don't have control of the decisions

- Your suggestion is that shared liability with respect to employment issues as they related to the chief probation officer. And everybody else the chief probation officer hires?
- The chief probation officer is creating the hostile environment, I view that as the chief probation officer's responsibility to please the board if he or she has not done that, then he is responsible. If the court doesn't share the responsibility that the chief probation officer makes in hiring we don't have shared liability in regard to shared authority.
- There is some great truth in that. We are not simply talking about liability for hiring and firing we are talking about legal liability for every employment action against the probation officer. The chief probation officer is ultimately responsible for the probation officers.
- I guess I am but I think that if we work on it we can come up an agreeable defined shared responsibility for the decisions that lay on his or her footsteps. At least I hope we can but at least we have to explore that as a possibility, because if I go out with just this, I don't know how many counties would say "show me how that is different from what we have now". I mean, you are giving me another responsibility by participating on this committee, but it's the same responsibility that I have today and I don't have any control over that decision. That is why the connection is important. You have got to have a way of addressing it. Maybe we don't come up with doing the overall satisfaction of counties but if we don't take a step in that direction I'm afraid it's not going to be different than what we have today other than we have a model closer to 5. Court appoints with input from county.
- I agree with Rubin that you have to at least try. There is a good chance that we can do it and if we don't try we really have to set it up so that it's court appointed with county veto. Otherwise we are leaving the county exposed and we have to try to make clear what we mean. I think that we agree that if there is joint responsibility for this person being hired and not let go, that would be joint exposure. If we don't do that then we haven't accomplished anything.
- The point that Steve made is a valid one, that when you start going down this road, it's not just the appointment and termination of the chief probation officer but it is the liability for the discretionary decisions made by the chief probation officer and ultimately the slip and fall example is ultimately the responsibility of the chief probation officer no matter who says you have to face the court. I'm not sure when it comes right down to it, that the AOC has taken the position that they don't want to be responsible for facilities, they are going to say that they didn't want to be responsible for liability that arises from the failure to keep up the facilities.
- I understand.

- There is precedent for defining the slip and fall, but I'm not diminishing the other concerns of Judge Jahr that the issues may be broader than my legal concepts, we have to see what the legal concepts are. I'm not diminishing it, I am just saying that we have to try to get there to show all our constituents that we are trying live by the principles as best we can.
- There is one critical distinction between the court model, because you are right, the court model although there will always be gray areas, any right to file lawsuit. One distinction is that the employees are the responsibility of the court where the employees of the probation office status quo are employees of the county.
- There was a distinction made in the original legislation, there was a recommendation that the county was responsible for services but the courts were responsible for things related to court operations.
- And court operations responsibility that follows from the probation operations responsibility will continue to be funded by the county.
- For the foreseeable future.
- Unfortunately.
- Not forever.
- You know where I stand on that.
- There were philosophical distinctions that we hoped would go to the court, if in fact we were challenged or simply things related to court operations. If it is strictly related to facilities as a result of our inability or reluctance to carry out our duty in that regard, we are left holding the bag. The same case the state's inability to the operations and the failure of your employees to notify us of the slip and fall condition, you would be liable for that. That remains the theory and if I'm not mistaken, there is legislation with provisions that would each indemnify each other, but I'm not sure of that. Even before the employee's task force met we voted to pick up your liability issues related to something harder than simply assuming liability.
- Quick scenario, which is why I think we maybe created problems if we want to go forward with this. Let's say that a chief probation officer is hired and hires a series of managers and there is sexual harassment going on in the second layer that is actionable. Is the state of California on the hook even though the employees in this scenario are all county employees? It's an employment issue. Ultimately the chief probation officer is responsible for the entire office. Whatever my view on it doesn't really matter, the question is does that create the kind of impediment that will blow this out of the water assuming it's ever attempted?
- I hope not. I'm hoping that we can come up creatively and define the liability. All I'm suggesting is that if we don't try to do that and put this on the table, we will find out how far we can go. The county is at a loss if this is not on the table.

- Why don't we start with a model proposal and see what kind of feedback we get. It sounds like there is consensus by everyone for at least part of the liability issue when you get past a certain point there is no consensus, maybe it makes sense to start with a modest proposal which would be to include joint liability for employment decisions, relating to the hiring, supervision, discipline and termination of the chief probation officer. It sounds like if there is joint authority there would be joint liability. Start with that modest proposal understanding that the county would probably like a lot more and the courts wants no more than that because none of these employees are court employees at this point. If at any point they become court employees, you are going to move into that but at this point, none of them are court employees, the chief probation officer is not a court employee although selected in most counties by the judges so arguably creating liability. If you start with a modest proposal you can take it out for comment discussion feedback, if that is not acceptable, then we can work on that at our next meeting. And see if we can refine it to a point where it would be acceptable or if we have to move to the position, that would be totally unacceptable to the courts, then we have to go back to appointment with veto and termination with input model.
- I think sending this out for comment is advisable. I suspect the council would have a hard time with the liability issue per se but I would also suggest that they can give us a better idea.
- We are not going to send it out for comment, we are going to take it to the various groups and say this is the beginning. A majority recommendation give us some feedback, help us refine it. Tell us how you think we can improve it. And then in September we work it through. Either it is totally acceptable to some people, acceptable with modification, or it is not acceptable at all. At least we have a starting point that embraces the principles that we have worked hared to establish.
- Is this joint committee model going to address is the equal 2-4-6 model with majority, or is it going to address the issue of "at-will" or status of the appointment. There is terms of office, at will or for cause.
- You are saying include at-will.
- It's different from county to county. In Sacramento, it's a county department which are civil service protected.
- You can leave it the way it is. Whatever it is it is.
- The thought is that Audrey will draft this and basically say this is the discussion model we are working on in light of our principles. And give us your feedback. Before she gets that done, we want to send it out to everyone by email and get feedback.
- We can also spread the information that in light of competing legislation the committee has been asked to come up with an interim recommendation to

assist counties in the selection of supervision and termination of chief probation officers etc. etc. Here is the model.

- I'd like to send this out to everyone by email you can comment and then we will work together to come up with a final that is based on what we talked about here, if it's not perfect remember this is not the final so we will be taking it out for discussion
- One other thing, when you are talking about the people representation as equal, we talked about majority vote. When we also talked about it should be done with some understanding that if you have a body that is hiring, that same representative body. If you are hired by one group and fired by the other, I'm going to start responding to this group.
- Since you are responding the only opportunity is to respond to the judges you work with and the board of supervisors. Whoever they put on that committee.
- My point is if the committee is going to make the decision as to whether or not I go, then I'm going to have to respond to that committee. They are going to make the recommendations.
- And how do you respond to that
- All I'm saying is that I don't care who's on it as long as it's the same group.
- I want to go beyond that because I think it is an important distinction, the people you are going to work for are the county and the court. The county and the courts are going to select people to sit to make those decision, the people that serve on the counties part are not going to go in there without the support of the board of supervisors. They are not going to arbitrarily pick someone not supported by the board. You work for the board of supervisors, and the safe thing is to report.
- How many are in support of sending the joint committee model recommendation out for comment? Understanding that we will get feedback and will be revising it and can always completely eliminate it and go to another model.
- How many in favor?
- 8
- How many opposed?
- 2
- We have a majority recommendation.
- This doesn't signify that we agree with everything.
- No, right. This is a starting point, let's discuss it, and get feedback.
- Our next meeting is Sept 12-13, 2002. In recognition of Sept. 11 we are starting later on the 12th to allow everyone to fly in that morning.
- Please let Audrey know if there are any meetings that we should be attending in order to collect feedback on the model.